

## **§ 6.41**

substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

### **§ 6.41 Referral to Chief Administrative Law Judge.**

(a) Upon timely receipt of a request for a hearing under § 4.12 of part 4 or § 5.12 of part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

### **§ 6.42 Amendments to pleadings.**

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may,

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upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

### **§ 6.43 Consent findings and order.**

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If a such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

### **§ 6.44 Decision of the Administrative Law Judge.**

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact,

conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision a petition for review thereof shall be filed as provided in § 6.45 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and § 6.43 of this title.

#### **§ 6.45 Petition for review.**

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board pursuant to 29 CFR part 8 if the proceeding was under the Service Contract Act, or to the Administrative Review Board pursuant to 29 CFR part 7 if the proceeding was under § 5.12(a)(1) of part 5 of this title or under section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

#### **§ 6.46 Ineligible list.**

Upon the final decision of the Administrative Law Judge, Administrative Review Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 5(a) of the Service Contract Act or § 5.12(a) of part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 3(a) of the Davis-Bacon Act has an interest.

### **Subpart E—Substantial Variance and Arm's Length Proceedings**

#### **§ 6.50 Scope.**

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of part 4 of this title and states the rules of practice applicable to hearings under section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and sections 2(a)(1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

#### **§ 6.51 Referral to Chief Administrative Law Judge.**

(a) Referral pursuant to § 4.10 or § 4.11 of part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: The agency whose contract is involved, the parties to the collective bargaining agreement, any